IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No.43 of 2006
in
Appeal (Lodging) No. 1276 of 2005
in
Arbitration Petition No.195 of 2004

M/s. AMT Impex ....Appellant
versus
M/s. P. R. Shah Share & Stock Brokers Pvt. Ltd. ....Respondents

M.D.D.Madon, Senior Advocate, instructed by M/s. Nadkarni and Associates for the appellant.

Mr.A.Y.Bookwala with Mr S.K. Jain for respondents.

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA,J.

DATE: JULY 3, 2006.

P.C.:-

The appellant has taken out the present notice of motion for condonation of delay of 205 days in filing the above appeal. In the affidavit in support of the motion various grounds have been set out. It is stated that the respondents approached him for out of court settlement and due to pressure of work and business exigencies he had to travel out of Mumbai very frequently during the period from April, 2005 till October 2005. The appellant has given details to justify the delay.

The learned counsel for the respondents, however, vehemently opposed the notice of motion. He invited our attention to the reply filed by Shri Chetan M. Sheth, Director of the respondent company. The learned counsel for the respondents submits that the grounds stated about the settlement talks with Mr P. R.Shah of the respondents and his wife are totally false. He submits that Mr. P.R.Shah expired long before and his wife is a aged lady to discuss about settlement. It was submitted that the explanation of typing error cannot be accepted. The appellant in his affidavit has explained that inadventantly instead of typing the name of Mr. Chetan M.Sheth, the name of Mr.P.R.Shah was mentioned with whom the appellant had settlement talks.

Having considered the submissions advanced before us, in our opinion, the appellant has sufficiently explained the delay in filing the appeal. We may not give importance to the mentioning of name of Mr. P.R.Shah in place of Mr Chetan Sheth and to examine whether there would be any typographical error in mentioning the name of the person with whom appellant had settlement talks. Suffice it to say that the appellant has explained the delay satisfactorily. Even in the absence of sufficient cause, imposing substantial cost on the appellant would meet the ends of justice.

Accordingly the notice of motion is made absolute in terms of prayer clause (a) on condition that the appellant shall pay cost quantified at Rs.25,000/- to the respondents within a period of two weeks from today.

CHIEF JUSTICE

ABHAY S. OKA, J.